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HOUSE BILL 803
Committee Substitute Favorable 4/24/17
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Short Title: Landlord Liability Changes.

(Public)

Sponsors:

Referred to:

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO CODIFY *DAVENPORT V. D.M. RENTAL PROPERTIES, INC.*, REGARDING
CRIMINAL RECORDS OF TENANTS, OCCUPANTS, AND GUESTS AND TO
ALLOW FOR AUTHORIZED INDIVIDUALS TO DIRECT THE REMOVAL OR
DISPOSAL OF CERTAIN PERSONAL PROPERTY OF A DECEDENT LOCATED IN
LEASED PREMISES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 1 of Chapter 42 of the General Statutes is amended by
adding a new section to read:

"§ 42-14.5. Foreseeability not created by criminal record; no duty to screen.

Notwithstanding any other duty or obligation which may be defined by this Chapter or otherwise provided by law or any theory of liability, the criminal record of any prospective or current residential lessee, occupant, or guest shall not make any future injury or damage arising from that residential lessee, occupant, or guest foreseeable by the residential lessor or residential lessor's agent, nor shall a residential lessor or a residential lessor's agent have a duty to screen for, or to refuse to rent because of, the criminal record of a prospective or current residential lessee, occupant, or guest. This statute does not prohibit a residential lessor or residential lessor's agent from using a criminal background check as grounds for refusing to rent to any prospective residential lessee or current lessee."

SECTION 1.(b) G.S. 42-25.7 reads as rewritten:

"§ 42-25.7. Distress and distraint not permitted.

It is the public policy of the State of North Carolina that distress and distraint are prohibited and that landlords of residential rental property shall have rights concerning the personal property of their residential tenants only in accordance with G.S. 42-25.9(d), 42-25.9(g), 42-25.9(h), 42-36.2, 28A-25-2, or 28A-25-7."

SECTION 2.(a) G.S. 28A-25-1 reads as rewritten:

"§ 28A-25-1. Collection of property by affidavit when decedent dies intestate.

(a) When a decedent dies intestate leaving personal property, less liens and encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days from the date of death, any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing a debt, obligation, stock or chose in action to a person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, or an heir or creditor of the decedent, not disqualified under G.S. 28A-4-2, upon being presented a



1 certified copy of an affidavit filed in accordance with subsection (b) and made by or on behalf
 2 of the heir or creditor or the public administrator stating:

- 3 (1) The name and address of the affiant and the fact that the affiant is the public
 4 administrator or an heir or creditor of the decedent;
- 5 (2) The name of the decedent and the decedent's residence at time of death;
- 6 (3) The date and place of death of the decedent;
- 7 (4) That 30 days have elapsed since the death of the decedent;
- 8 (5) That the value of all the personal property owned by the estate of the
 9 decedent, less liens and encumbrances thereon, does not exceed twenty
 10 thousand dollars (\$20,000);
- 11 (6) That no application or petition for appointment of a personal representative
 12 is pending or has been granted in any jurisdiction;
- 13 (7) The names and addresses of those persons who are entitled, under the
 14 provisions of the Intestate Succession Act, to the personal property of the
 15 decedent and their relationship, if any, to the decedent; and
- 16 (8) A description sufficient to identify each tract of real property owned by the
 17 decedent at the time of the decedent's death.

18 In those cases in which the affiant is the surviving spouse and sole heir of the decedent, not
 19 disqualified under G.S. 28A-4-2, the property described in this subsection that may be collected
 20 pursuant to this section may exceed twenty thousand dollars (\$20,000) in value but shall not
 21 exceed thirty thousand dollars (\$30,000) in value, after reduction for any spousal allowance
 22 paid to the surviving spouse pursuant to G.S. 30-15. In such cases, the affidavit shall state: (i)
 23 the name and address of the affiant and the fact that the affiant is the surviving spouse and is
 24 entitled, under the provisions of the Intestate Succession Act, to all of the property of the
 25 decedent; (ii) that the value of all of the personal property owned by the estate of the decedent,
 26 less liens and encumbrances thereon, does not exceed thirty thousand dollars (\$30,000); and
 27 (iii) the information required under subdivisions (2), (3), (4), (6), and (8) of this subsection.

28 ...

29 (d) The public administrator or an heir that has presented an affidavit as provided in
 30 subsection (a) of this section shall be entitled to remove or otherwise dispose of the decedent's
 31 personal property located in demised premises."

32 **SECTION 2.(b)** G.S. 28A-25-1.1 reads as rewritten:

33 **"§ 28A-25-1.1. Collection of property by affidavit when decedent dies testate.**

34 (a) When a decedent dies testate leaving personal property, less liens and encumbrances
 35 thereon, not exceeding twenty thousand dollars (\$20,000) in value, at any time after 30 days
 36 from the date of death, any person indebted to the decedent or having possession of tangible
 37 personal property or an instrument evidencing a debt, obligation, stock or chose in action
 38 belonging to the decedent shall make payment of the indebtedness or deliver the tangible
 39 personal property or an instrument evidencing a debt, obligation, stock or chose in action to a
 40 person claiming to be the public administrator appointed pursuant to G.S. 28A-12-1, a person
 41 named or designated as executor in the will, devisee, heir or creditor, of the decedent, not
 42 disqualified under G.S. 28A-4-2, upon being presented a certified copy of an affidavit filed in
 43 accordance with subsection (b) and made by or on behalf of the heir, the person named or
 44 designated as executor in the will of the decedent, the creditor, the public administrator, or the
 45 devisee, stating:

- 46 (1) The name and address of the affiant and the fact that the affiant is the public
 47 administrator, a person named or designated as executor in the will, devisee,
 48 heir or creditor, of the decedent;
- 49 (2) The name of the decedent and the decedent's residence at time of death;
- 50 (3) The date and place of death of the decedent;
- 51 (4) That 30 days have elapsed since the death of the decedent;

- 1 (5) That the decedent died testate leaving personal property, less liens and
2 encumbrances thereon, not exceeding twenty thousand dollars (\$20,000) in
3 value;
- 4 (6) That the decedent's will has been admitted to probate in the court of the
5 proper county and a duly certified copy of the will has been recorded in each
6 county in which is located any real property owned by the decedent at the
7 time of the decedent's death;
- 8 (7) That a certified copy of the decedent's will is attached to the affidavit;
- 9 (8) That no application or petition for appointment of a personal representative
10 is pending or has been granted in any jurisdiction;
- 11 (9) The names and addresses of those persons who are entitled, under the
12 provisions of the will, or if applicable, of the Intestate Succession Act, to the
13 property of the decedent; and their relationship, if any, to the decedent; and
- 14 (10) A description sufficient to identify each tract of real property owned by the
15 decedent at the time of the decedent's death.

16 In those cases in which the affiant is the surviving spouse, is entitled to all of the property
17 of the decedent, and is not disqualified under G.S. 28A-4-2, the property described in this
18 subsection that may be collected pursuant to this section may exceed twenty thousand dollars
19 (\$20,000) in value but shall not exceed thirty thousand dollars (\$30,000) in value, after
20 reduction for any spousal allowance paid to the surviving spouse pursuant to G.S. 30-15. In
21 such cases, the affidavit shall state: (i) the name and address of the affiant and the fact that the
22 affiant is the surviving spouse and is entitled, under the provisions of the decedent's will, or if
23 applicable, of the Intestate Succession Act, to all of the property of the decedent; (ii) that the
24 decedent died testate leaving personal property, less liens and encumbrances thereon, not
25 exceeding thirty thousand dollars (\$30,000); and (iii) the information required under
26 subdivisions (2), (3), (4), (6), (7), (8), and (10) of this subsection.

27 ...

28 (d) The public administrator, a person named or designated as executor in the will,
29 devisee, or an heir that has presented an affidavit as provided in subsection (a) of this section
30 shall be entitled to remove or otherwise dispose of the decedent's personal property located in
31 the demised premises."

32 **SECTION 2.(c)** G.S. 28A-25-2 reads as rewritten:

33 **"§ 28A-25-2. Effect of affidavit.**

34 The person paying, delivering, transferring or issuing personal property or the evidence
35 thereof pursuant to an affidavit meeting the requirements of G.S. 28A-25-1(a) or
36 G.S. 28A-25-1.1(a) is discharged and released to the same extent as if the person dealt with a
37 duly qualified personal representative of the decedent. A lessor or lessor's agent of the demised
38 premises that, at the direction of an affiant authorized pursuant to G.S. 28A-25-1(d) or
39 G.S. 28A-25-1.1(d), removes, throws away, or otherwise disposes of the personal property
40 located in demised premises is discharged and released to the same extent as if the lessor dealt
41 with a duly qualified personal representative of the decedent. The person or lessor is not
42 required to see to the application of the personal property or evidence thereof or to inquire into
43 the truth of any statement in the affidavit. If any person to whom an affidavit is delivered
44 refuses to pay, deliver, transfer, or issue any personal property or evidence thereof, it may be
45 recovered or its payment, delivery, transfer, or issuance compelled upon proof of their right in
46 an action brought for that purpose by or on behalf of the persons entitled thereto. The court
47 costs and attorney's fee incident to the action shall be taxed against the person whose refusal to
48 comply with the provisions of G.S. 28A-25-1(a) or G.S. 28A-25-1.1(a) made the action
49 necessary. The heir or creditor to whom payment, delivery, transfer or issuance is made is
50 answerable and accountable therefor to any duly qualified personal representative or collector
51 of the decedent's estate or to any other person having an interest in the estate."

1 **SECTION 3.** Section 1 of this act is effective when it becomes law. The remainder
2 of this act is effective when it becomes law and applies to affidavits submitted on or after that
3 date.